

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Crl.R. No.212 of 2007

Date of Decision: 15.3.2007

Partap Singh

....Petitioner.

Versus

Jai Parkash and others.

...Respondent.

CORAM : Hon'ble Mr. Justice S.S.Saron.

Present:- Mr.Amit Jaswal,Advocate
for the petitioner.

S.S.SARON, J.(ORAL)

The petitioner, who is the complainant in the complaint case, has filed the present revision petition under Section 401 of the Code of Criminal Procedure (`Cr.P.C.' for short) assailing the order dated 21.8.2006 passed by the learned Judicial Magistrate Ist Class, Rohtak, whereby the respondents have been discharged. He also challenges the order dated 13.7.2006 whereby the pre charge evidence of the complainant has been closed.

The case set up by the petitioner is that he is owner in possession of the plot (gitwara) situated in village Sanghi for the last 80 years. There is a dispute between the complainant and the accused persons regarding possession of the said plot. Randhir Singh son of Dharam Singh (respondent No.2) had filed a case under the Punjab Village Common Lands (Regulation) Act,1961 (`Act'- for short) against the complainant and others regarding the said plot. The Collector under the Act, it is

alleged, found the petitioner to be in possession of the plot. On 21.3.1995 while the petitioner was constructing his house on the plot, the accused persons at about 6:00 p.m. came at the spot and tried to stop the construction work. With the intervention of the villagers they went back. In any case they threatened the petitioner to teach him a lesson. At about 10:00 p.m. on the same day i.e. 21.3.1995 while the petitioner along with Karan Singh and others were sitting in his house, then the accused persons again came and forcibly entered the house. They started demolishing the walls of the house. The complainant and others tried to stop them and they threatened to kill him. The accused persons were armed with weapons and on hearing noises raised by the villagers, who had come to stop them, ran away. The house, it is alleged, has been totally demolished. The petitioner is stated to have reported the matter to the police. However, no action was taken by the police. Therefore, the complaint was filed in which the petitioner examined himself as PW1, Shambu as PW2, Munshi Ram as PW3 and Hukam as PW4.

The learned Trial Magistrate after considering the preliminary evidence summoned the respondents vide his order dated 27.9.1996 for the offences under Section 148, 427, 452, 506 read with section 149 of the Indian Penal Code. During the trial of the case on 13.7.2006 the case had been called several times but none appeared on behalf of the complainant nor any pre charge evidence had been produced. It was observed by the learned Trial Magistrate that the case pertains to the year 1995 and no reasonable ground was made out for further adjournment. Accordingly, the evidence of

the complainant was closed by order of the Court. As some evidence of the complainant had been led, it was deemed proper not to dismiss the complaint for want of prosecution. Accordingly, it was adjourned to 11.8.2006 for consideration on the point of charge. On the adjourned date i.e. 11.8.2006, the complainant again did not appear and the learned Trial Court, it is stated, considered the point of charge and kept the case for orders on 21.8.2006. On 21.8.2006 the complainant appeared with his counsel. On the said date, however, the order was passed discharging the respondents. It was held that the complainant has failed to prove his ownership or possession in respect of the property in question. He further failed to prove that the house in question belonged to him. He also failed to prove as to on which part damage has been caused by the accused to the house. The fact that he had threatened the petitioner with dire consequence was also not proved. It was observed that as Jagjit Singh was held to be owner in possession of the property in question by the Civil Court, the question of criminal trespass in their own property by the accused persons does not arise. Accordingly, it was held that the complainant-petitioner had failed to establish prima-facie case against the accused persons. All the accused persons except Dalbir, who was declared proclaimed offender, were ordered to be discharged.

The said order of discharge dated 21.8.2006 and the order closing the evidence of the complainant dated 13.7.2006, as already noticed, are assailed in the present petition.

Sh.Amit Jaiswal, Advocate appearing for the petitioner has

submitted that the order closing the evidence of the petitioner is unduly harsh and one effective opportunity only was required to be granted so as to enable the petitioner to lead his entire evidence. It is further submitted that the order of discharge of the respondent is even otherwise erroneous as the learned Trial Magistrate has relied on the judgment of the Civil Court dated 28.5.2004. However, the learned counsel has not been able to give the particulars of the said judgment although it is submitted that after the order of discharge was passed by the learned Trial Magistrate, the operation of the judgment of Civil Court has been stayed by this Court in Regular Second Appeal filed by the petitioner. He, however, is not aware of the particulars of the RSA and the date of grant of stay or even as to what is the nature of the stay granted. In any case, it is also contended that the counsel appearing for the petitioner before the Court below namely Sh.Rajinder Singh Nandan, Advocate, had joined as Deputy Secretary in the Haryana Vidhan Sabha. Therefore, he could not appear before the learned Trial Magistrate on 13.7.2006.

I have given my thoughtful consideration to the contentions of learned counsel for the petitioner. The learned Trial Court has observed that the case pertains to the year 1995 and no reasonable ground was made out for adjourning the matter further. The fact that the learned counsel for the complainant/petitioner had joined as Deputy Secretary in Haryana Vidhan Sabha is hardly of any consequence. It is not in dispute that it was a private complaint in which the complainant has also to appear on the dates fixed for hearing. Learned counsel for the petitioner has not been able to give any explanation whatsoever as to why the complainant himself was not

present on the date fixed i.e. 13.7.2006 for the purpose of trial.

In the circumstances no fault can be found with the order dated 13.7.2006 passed by the learned Trial Magistrate in not adjourning the matter further and closing the evidence of the complainant. In fact it has not even been shown by the petitioner as to whether the witnesses had been summoned for the date fixed i.e. 13.7.2006 for recording their evidence.

The order dated 21.8.2006 passed by the learned Trial Magistrate is just and reasonable. The Civil Court order was found in favour of the accused. Jagjit Singh was held to be owner in possession of the property in question by the Civil Court. It is admittedly thereafter that the decree of Civil Court is stated to have been stayed by this Court in Regular Second Appeal. Therefore, on the date of passing order dated 21.8.2006 no infirmity can be found in discharging the respondent/accused.

For the fore-going reasons, there is no merit in the revision and the same is accordingly dismissed.

March 15,2007
Reema

(S.S.SARON)
JUDGE